STATE OF MICHIGAN

COURT OF APPEALS

DETROIT PUBLIC SCHOOLS,

Plaintiff-Appellant,

v

ORGANIZATION OF SCHOOL ADMINISTRATORS & SUPERVISORS,

Defendant-Appellee.

UNPUBLISHED
June 12, 2003

No. 247251
Wayne Circuit Court
LC No. 03-303433-CL

ORGANIZATION OF SCHOOL ADMINISTRATORS & SUPERVISORS,

Plaintiff-Appellee,

v

DETROIT PUBLIC SCHOOLS,

Defendant-Appellant.

No. 247252
Wayne Circuit Court
LC No. 02-230638-CL

Before: Cavanagh, P.J., and Gage and Zahra, JJ.

PER CURIAM.

In these consolidated cases, Detroit Public Schools (hereinafter school district) appeals as of right from circuit court orders enforcing an arbitration award in favor of members of the Organization of School Administrators & Supervisors (hereinafter union), and denying the school district's motion to vacate the arbitration award. We affirm.

During March and April 2002, the school district decided for financial reasons not to renew the contracts of approximately 400 of its administrative employees. Before making his decision, the district's chief executive officer (CEO) assigned the nonrenewal matter to the district's chief of staff, who in turn arranged for the affected administrators to meet with other district representatives selected by the chief of staff to discuss with the administrators their potential nonrenewals. The CEO's ultimate decision not to renew the administrators' contracts spawned arbitration of a union grievance pursuant to the collective bargaining agreement between the parties. The arbitrator determined that the nonrenewal meeting procedure employed

by the school district failed to comply with MCL 380.471a, and accordingly awarded the affected administrators a one-year renewal of their employment contracts. The circuit court ordered the enforcement of the arbitrator's award.

The school district now raises various claims that the arbitrator exceeded his contractual authority in making his award.

> It is well-settled that arbitration is a favored means of resolving labor disputes and that courts refrain from reviewing the merits of an arbitration award when considering its enforcement. To that extent, judicial review of an arbitrator's decision is very limited; a court may not review an arbitrator's factual findings or decision on the merits. [*Port Huron Area School Dist v Port Huron Ed Ass'n*, 426 Mich 143, 150; 393 NW2d 811 (1986).]

The reviewing court must use caution to limit its review to whether the arbitrator exceeded his contractual authority. *Michigan State Employees Ass'n v Dep't of Mental Health*, 178 Mich App 581, 583; 444 NW2d 207 (1989). When the arbitrability of an issue is not contested, the only issue is whether the arbitrator, in granting the award, disregarded the terms of his employment and the scope of his authority as expressly circumscribed in the arbitration contract. *Port Huron Area School Dist*, *supra* at 151-152; *Police Officers Ass'n of Michigan v Manistee Co*, 250 Mich App 339, 343; 645 NW2d 713 (2002). "Judicial review is limited to whether the award 'draws its essence' from the contract, whether the award was within the authority conferred upon the arbitrator by the collective bargaining agreement." *Michigan State Employees Ass'n*, *supra* at 583-584, quoting *Ferndale Ed Ass'n v Ferndale School Dist No 1*, 67 Mich App 637, 642-643; 242 NW2d 478 (1976).

The parties' collective bargaining agreement provided for arbitration of challenges to administrator nonrenewals under the following circumstances: "The arbitrator shall be confined to applying section 471 [MCL 380.471a] (arbitrary and capricious) of the Michigan School Code and determining whether the employer has complied with that section." The agreement further provided that the arbitrator had no jurisdiction "to add to, subtract from, or modify any terms of this agreement . . . or to substitute his discretion for that of any of the parties."

The school district contends that the arbitrator incorrectly interpreted § 471a to require that each administrator have the right to a nonrenewal meeting before a majority of the school board. According to the district, the arbitrator's decision failed to apply § 471a because it ignored the explicit reference within MCL 380.471a(4) of the school reform act, which vested the board's powers and responsibilities in the district's CEO, and authorized the CEO to delegate his powers and duties to designees. The school district concludes that the arbitrator exceeded his authority by disregarding or modifying the meaning of § 471a, which the agreement ordered him to apply.

After reviewing the arbitrator's opinion and award, we find that the arbitrator recognized and adhered to the contractual limitations on his authority. In conducting his analysis, the arbitrator considered the agreement language granting his authority, the language within § 471a,

to which the agreement specifically referred him, and did precisely what the agreement directed him to do: determined whether the school district properly nonrenewed the administrators in accordance with § 471a.[1] The arbitrator simply did not look beyond the scope of the issues the agreement required him to decide, or the decisional basis on which the agreement prescribed his award. In no conceivable way did the arbitrator exceed the scope of his authority by "refus[ing] to recognize the terms and conditions expressly circumscribing his jurisdiction and authority in resolving a submitted dispute," or craft an award "dependent upon . . . interpretation of provisions expressly withheld from arbitral jurisdiction, or upon [the] arbitrator's disregard and contravention of provisions expressly limiting arbitral authority." *Port Huron Area School Dist, supra* at 152.

Because the arbitrator in granting the award did not disregard the terms of his employment and the scope of his authority as expressly circumscribed in the contract, judicial review effectively ceases. See *Police Officers Ass'n of Michigan, supra*. This Court will not further consider the merits of the arbitrator's decision, irrespective whether the arbitrator incorrectly interpreted the parties' agreement. *Port Huron Area School Dist, supra*; *Police Officers Ass'n of Michigan, supra*; *Michigan State Employees Ass'n, supra* at 584. The school district's suggestion that the arbitrator modified the parties' agreement by ignoring the correct interpretation of § 471a referenced therein lacks merit because, by incorporating § 471a into the collective bargaining agreement, the parties bargained for and thus empowered the arbitrator to interpret the statutory terms together with the rest of the applicable contractual provisions. *Saginaw v Michigan Law Enforcement Union, Teamsters Local 129*, 136 Mich App 542, 552, 554, 556-558; 358 NW2d 356 (1984); *Saginaw v Saginaw Firefighters Ass'n, Local 422, IAFF, AFL-CIO*, 130 Mich App 401, 407; 343 NW2d 571 (1983); *Chippewa Valley Schools v Hill*, 62 Mich App 116, 121-122; 233 NW2d 208 (1975).[2]

The school district also challenges the arbitrator's application of § 471a on the basis that it does not apply to the district's economically motivated layoffs of administrators. However, the district's argument ignores that the arbitrator's decision plainly addressed only the propriety of its *nonrenewals* of the administrators, not their layoffs. Accordingly, the instant case is distinguishable from *Wessely v Carrollton School Dist*, 139 Mich App 439, 440-444; 362 NW2d 731 (1984), which involved only layoffs, unaccompanied by simultaneous nonrenewals.

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[1] The arbitrator twice stated the issue for his decision in a manner reflecting his charge pursuant to agreement ¶ 4.0.D.: "Did the Detroit Schools Board of Education violate the collective bargaining agreement by the process used subsequent to issuing notices of non-renewal to certain Curriculum Leaders and Coordinators?" and "[T]he question before the Arbitrator in this matter is straightforward: did the District comply with the provisions of MCL 380.471(a) [sic] in the 2002 non-renewal process?"

[2] We further find unpersuasive the school district's suggestion that the arbitrator usurped the discretion of its CEO. The arbitrator did not second guess the CEO's nonrenewal decision, and did not specifically order the CEO how to proceed further in pursuing the nonrenewal option. The arbitrator's decision expressed criticism of the CEO's conduct of the nonrenewal meetings only to the extent the meetings did not comply with the arbitrator's interpretation of § 471a, which the collective bargaining agreement directed him to apply.

Lastly, the school district's suggestion that we apply the standard of review of statutory arbitration to the instant labor arbitration, on the basis of two unpublished opinions of this Court, merits little discussion. First, MCL 600.5001(3) explicitly provides that the chapter describing statutory arbitration "shall not apply to collective contracts between employers and employees." This Court long ago rejected an identical suggestion that it apply the principles of review of statutory arbitration set forth in *DAIIE v Gavin*, 416 Mich 407; 331 NW2d 418 (1982), in considering a labor arbitrator's award. *Roseville Community School Dist v Roseville Federation of Teachers*, 137 Mich App 118, 122; 357 NW2d 829 (1984). Moreover, the district's suggestion that this Court apply *DAIIE*, two unpublished opinions of this Court, and federal precedent in reviewing the instant labor arbitration ignores the abundant, consistent and controlling case law governing the standard of review of a labor arbitrator's award pursuant to a collective bargaining agreement, including valid and binding precedent such as *Port Huron Area School Dist*, *supra* at 143, and, more recently, *Police Officers Ass'n of Michigan*, *supra* at 339, and *Lenawee Co Sheriff v Police Officers Labor Council*, 239 Mich App 111, 118; 607 NW2d 742 (1999). See MCR 7.215(C)(2), (I)(1).

Affirmed.

/s/ Mark J. Cavanagh
/s/ Hilda R. Gage
/s/ Brian K. Zahra